

FILED
Clerk
District Court

AUG 09 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff

v.

MARVIN LEON GUERRERO,

Defendant

Criminal No. 04-00002-001
Civil No. 05-0023

ORDER DENYING
DEFENDANT'S FIRST
28 U.S.C. § 2255 MOTION

THIS MATTER is before the court on *pro se* defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

Defendant pleaded guilty on March 23, 2004, to conspiracy to commit arson in violation of 18 U.S.C. § 844(n). The four remaining counts in the indictment were then dismissed on motion of plaintiff. On July 1, 2004, defendant was sentenced, *inter alia*, to sixty months in prison. This petition was placed in the prison's internal mail system on June 30, 2005, and is thus timely.

1 Defendant seeks to be resentenced due to alleged ineffective assistance of
2 counsel during sentencing. Defendant's motion rests solely on his allegation that,
3 during the 60-90 minute recess ordered by the court at sentencing to allow defendant
4 to read and review the presentencing report with his attorney, his attorney threatened
5 to abandon him if he sought to bring anything to the court's attention. Defendant
6 alleges that this threat prevented him from bringing mitigating information to the
7 attention of the court: that the arson was simply the result of a business dispute.
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10 For the following reasons, defendant Leon Guerrero's motion is denied.

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12 The court's first ground for denying Leon Guerrero's motion is that it is
13 brought in violation of the specific terms of his March 24, 2004, plea agreement. His
14 plea agreement states in relevant part that he "will neither appeal, nor otherwise
15 litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any
16 sentence of five years of less...." Plea Agreement, Pages 5-6, ¶ 12 (Mar. 23, 2004).
17 The court has reviewed the tape recording of the sentencing hearing and notes that
18 defendant was reminded of this provision and said that he understood it.
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21 Waiver provisions of plea agreements are enforceable. *See e.g. United States v.*
22 *Mezzanatto*, 513 U.S. 196, 115 S.Ct. 797 (1995). This provision is enforceable and
23 Leon Guerrero's motion is denied on the ground that he obtained the full benefit of
24 his bargain in the plea agreement and that he validly waived his right to file this
25 motion.
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1 The court also denies defendant's motion because he was sentenced to the
2 statutory mandatory minimum. The thrust of defendant's argument is that due to the
3 alleged misconduct of his counsel during the break in the sentencing proceedings, he
4 was unable to obtain a downward departure from the mandatory minimum sentence
5 he received. Specifically, defendant wished to point out a "significant flaw" in the
6 presentence report: "the fact that the arson was merely a result of a long term business
7 dispute between the only two cellular phone service providers in Saipan." AO Form
8 243 at 5.

11 Defendant could not qualify for a downward departure from the mandatory
12 minimum sentence. Under Federal Sentencing Guidelines § 5C1.2, no such departure
13 can be given to one who is "an organizer, leader, manager, or supervisor of others in
14 the offense[.]" Defendant in his plea agreement admitted that he was the organizer of
15 the crime, Plea Agreement, ¶ 4(b) (Mar. 23. 2004), and he does not here disavow that
16 portion of the agreement. He also agreed that no downward departure was warranted
17 and that he would not ask for such a departure. *Id.* at p. 4-5. At sentencing,
18 defendant's counsel recognized that the court could not sentence defendant below the
19 statutory mandatory minimum of five years, but still asked the court to do so.
20 Plaintiff objected that such a request breached the specific terms of the plea
21 agreement. Defense counsel acknowledged, "My client knows he is constrained by
22 the plea agreement."
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1 Defendant was sentenced to the statutory mandatory minimum of five years.¹
2 Even were the court to accept as true defendant's wholly unsupported assertions
3 against his counsel, the instant motion avails him nothing as he was sentenced, in
4 accordance with his plea agreement, to the most lenient term of imprisonment the
5 court could lawfully impose.
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7 Finally, defendant had previously expressed in the plea agreement that he was
8 "fully satisfied with the counsel, representation, and advice" given to him by his
9 lawyers, Mr. Joaquin Torres and Ms. Stephanie Flores. Plea Agreement, Page 4 ¶ 7.c
10 (Mar. 23, 2004). At no time during sentencing, even when specifically offered the
11 opportunity by the court, did defendant express any dissatisfaction with his attorneys.
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13 FOR THE FOREGOING REASONS, defendant's first motion under 28
14 U.S.C. § 2255 is denied. Nothing raised herein could change the sentence defendant
15 agreed to and which was imposed on him; however, the court takes seriously any
16 specific allegations of attorney misconduct. Both the court and the Northern Mariana
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21 The court would not have imposed a materially different sentence had it known
22 at that time that the sentencing guidelines were merely advisory. See United States v.
23 Ameline, 409 F.3d 1073, 1085 (9th Cir. 2005). Defendant initiated and organized the
24 plan to destroy the telecommunications equipment of a rival cellular phone service,
25 and recruited and paid two men to carry out his plan. The ensuing explosion did
26 several hundred thousand dollars worth of damage and could have resulted in serious
injuries or death to the perpetrators or anyone who had the misfortune to be nearby.
The term of imprisonment could well have been higher but for the specific agreement
of the parties to recommend the statutory mandatory minimum and the heavy
restitution contemplated, which satisfied the court that the sentence was appropriate.

1 Islands Bar Association provide mechanisms to address such allegations upon receipt
2 of a complaint detailing the alleged misconduct.
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4 IT IS SO ORDERED.

5 DATED this 9th day of August, 2005.
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10 ALEX R. MUNSON
11 Judge
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